IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RFA No. 317 of 2000

Reserved on : 27th August, 2007
Date of Decision: 10th September, 2007

L.A.C. and another		Appellants
	Versus	
Sh. Diwan Chand		Respondent

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? Yes.

For the appellants: Mr.Ramakant Sharma, Advocate.

For the respondent: Mr.G.D.Verma, Sr. Advocate, with Mr.Brij Chauhan, Advocate.

Sanjay Karol, J.

The appellant has assailed the impugned award 1.8.2000 passed in Land Reference Petition No. 48 of 1995/93, titled as Diwan Chand vs. LAC and another, whereby the compensation for the acquisition of petitioner's house has been enhanced from Rs.31785/- to Rs.64,437/-.

The respondent's land vide Notification published on 18.6.1988, issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), comprised in Khasra No. 2202/1, measuring 0-00-88 hectares, situate in Village Jhakri, Tehsil Rampur, District Shimla, was intended to be acquired. The Land Acquisition passed his award awarding the following compensation:-

"For Land	Rs.2339-04
30%	
For Trees	Rs.10237-00
Addl. Charges @ 12%	Rs.11260-94
and Huts	Rs.31785-00
Less 5%	Rs. 2590-00
Total	Rs.53,032-18"

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

Aggrieved by the same the respondent filed Land Reference Petition, which was registered as 48 of 1995/93.

Respondent-claimant examined himself as PW-1, Madho Ram (PW-2), Suresh Kumar (PW-3) and got exhibited documents site plan and evaluation of the house on the land by the expert Ext.PW-3/A and Ext.PW-3/B.

The appellant examined Shri K.K.Gupta (RW-1) and got exhibited the estimate of the market value Ext. RW-1/A, drawing of the building Ext.RW-1/B.

Based on the material on record, the Court below came to the conclusion that the market value of the house ought to have been assessed at Rs.64,437/- and accordingly enhanced the amount of compensation payable to the respondent for the same.

I have examined the statements of the parties and also gone through the material on record and I see no infirmity in the reasoning given by the Court below in determining the enhanced amount of compensation as market value of the respondent's house. The same is based on the statement of PW-3, Architect and Expert, who has submitted an abstract of cost and detail of measurement in terms of Ext.PW-3/B.

The point, however, for determination, as has been argued by the learned counsel for the appellants before me is as to whether the claimant's house could have been assessed separately and awarded compensation accordingly. In support of his contention, he has placed reliance upon the decision of the Apex Court rendered in *State of Kerala v. P.P.Hassan Koya*, reported in AIR 1968 SC 1201, *Ratan Kumar Tandon and others vs. State of U.P.*, reported in (1997) 2 SCC 161, , *Kiran Tandon vs. Allahabad Development Authority and another*, reported in (2004) 10 SCC 745.

Per contra, learned counsel for the respondent has relied upon the decisions rendered by the Apex Court as also this Court in *State of J& K vs. Mohammad Mateen Wani and others,* reported in AIR 1998 SC 2470, *Abdul Kuddus Mandal and others vs. State of Assam and another*, reported in (1999) 6 SCC 589, *Tejumal Bhojwani (dead) through LRs and others vs. State of U.P.*, reported in (2003) 10 SCC 525, Collector, LAC, Mandi vs. Karam Singh and others, reported in Latest HLJ 2000 (HP) 694, *Ramesh Chand and others vs. Land Acquisition Collector*, reported in Latest HLJ 2003 (HP) 977 and RFA No. 54 of 1998 (The State Govt. of Himachal Pradesh vs. Atma Ram and others, decided on 13.7.2007.

In *Hassan Koya (supra)*, The Court has held:-

> "..In determining compensation payable in respect of land with buildings, compensation cannot be determined by assessing the value of the land and the 'break-up value' of the buildings separately. The land and the building constitute one unit and the value of the entire unit must be determined with all its advantages and its potentialities. …"

In *Ratan Kumar Tandon and others (supra)*, it has been held:-

> "..It is well settled law that when land and building are acquired by a notification, the claimant is not entitled to separate valuation of the building and the land. They are entitled to compensation on either of the two methods but not both. If the building is assessed, it is settled law that the measure of assessment be based on either the rent received from the property with suitable multiplier or the value of the building is the proper method of valuation."

In *Kiran Tandon (supra)*, the Court held:

> "11. A question which arises here is as to what method for determining the value of the property should be adopted when

the land is comprised of buildings, trees or some other additions of like nature. In Parks, J.A.: Principles & Practice of Valuation (published by Eastern Law House, 1998 Edn.) the following paragraph on p.332 illustrates the different aspects of the problem:

> "Land with buildings is viewed in a different perspective than bare land as such. Land and buildings once married become one unit, and neither land nor building can thereafter be valued separately. A building once erected on or married to the site, as it is technically often termed, takes unto itself a value which may be either greater or less than the cost of erection depending upon the market situation. If the building properly and economically develops the land, the total value of the complete entity may be worth more than the sum of the individual valuer. In such cases, the excess of the composite value over the sum of the individual values is ascribable as the builder's profit. But there may also be instances to the contrary. It is generally impossible to arrive at the true value of the whole by addition of the parts."

"12. In *Abdullah Jan Mohd. Ganjee v. State of Bihar* (1967) 1 SCWR 214, it was observed that a building standing on the land and the land on which it stands may not for the purposes of the Land Acquisition Act, ordinarily be regarded as separate units capable of being separately valued and the Reference Court in the normal course should have valued the land and building as composite property by the evidence furnished by the value of similar and comparable properties in the neighbourhood or by capitalization of rent or other income received out of the property."

"13. This principle was reiterated in State of Kerala v. P.P.Hassan Koya, AIR 1968 SC 1201, wherein it was held as under: (AIR p. 1202 para 5):

> "In determining compensation payable in respect of land with buildings, compensation cannot be determined by ascertaining the value of the land and the 'break-up value' of

> the building separately. The land and the building constitute one unit, and the value of the entire unit must be determined with all its advantages and its potentialities."

The ratio of law laid down in the aforesaid decisions is on the basis of the facts before the Court and are clearly distinguishable. The aforesaid judgments in my view are not applicable for the simple reason that in *Mohammad Mateen Wani and others (supra),* the Apex Court itself has held as under:-

> "As regards the compensation in respect of fruit bearing trees and tubewells the High Court had relied upon the Government circular which allows compensation in respect of fruit bearing trees and tubewell separately. Nothing contrary has been brought to our notice and, therefore, we do not think it proper to disturb the said finding."

In *Tejumal Bhojwani (dead) through LRs. and others* vs. State of U.P., reported in (2003) 10 SCC 525, it has been held:

> "Next submission of the learned Senior Counsel is that the claimants were entitled to separate compensation for the tubewell as well as for the structure standing on the land and the High Court committed error while denying compensation for the above items, although the Land Acquisition Officer has granted compensation for those items. We find substance in the argument. However, learned counsel appearing for the Parishad argued that the claimants were not entitled to compensation for value of land and building separately and for that purpose cited a decision of this Court in *Ratan Kumar Tandon vs. State of U.P., (1997) 2 SCC 161*. We find that the said decision is distinguishable. In that case we find that there was capitalization of the value of land and structure and, therefore, the claimants were not given separate compensation for land and building. Here we find that there was no capitalization of value of land and structure by the Land

> Acquisition Officer in his award. On the other hand, the Land Acquisition officer has given compensation separately for the land, building and tubewell. In that view of the matter, the claimants are entitled to separate compensation for land, tubewell and structure."

It is evident that *Ratan Kumar Tandon (supra)* has been clearly distinguished in the aforesaid report.

In *Karam Singh (supra)*, wherein the Standing Orders issued by the Financial Commissioner, which have the force of law and are binding on the State, have not only been considered but approved and the Court while dealing with the assessment of compensation of fruit growing trees held as under:-

> "…A mere reading of various provisions of Standing Order noticed above relevant to the controversy involved in these appeals, unmistakably show that the State Govt. and the Land Acquisition Collector have been following these provisions scrupulously and strictly in the land acquisition proceedings and the Land Acquisition Collectors have made awards consistently in accordance with the relevant provisions of the Standing Orders for assessing the market value of the land, trees and houses etc. separately."
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> "…In these factual position and circumstances, the State of Himachal Pradesh and the Land Acquisition Collector cannot be permitted to urge that they are not obliged to pay the amount of compensation on the basis of the Standing Order No. 28 and Shri Harbans Singh Formula for acquired lands and fruit bearing trees separately. The Land Acquisition Collector is the agent of the State Government who makes offer to the claimants of the amount of compensation awarded in the awards and if the offer so made is not acceptable to the claimants, the claimants are entitled to receive the amount of compensation under protest and make reference petitions

under Section 18 of the Act for enhancement of the amount of compensation. Therefore, the State Govt. and the Land Acquisition Collector, who are appellants before us in these appeals cannot be permitted to raise the plea that the awards of the Collector and enhancement of the amount of compensation by the District Judges and Additional District Judges based upon the Government Standing Order, provisions contained in the Himachal Pradesh Land Records Manual and Shri Harbans Singh formula which allow compensation in respect of the land and fruit bearing trees which allow compensation in respect of the land and fruit bearing trees separately. Nothing contrary has been brought to our notice and, therefore we do not think it proper to disturb the awards of the Courts below making enhancement of the amount of compensation for the land and the fruit bearing trees separately."

(Emphasis supplied)

In *Ramesh Chand (supra)*, it has been held:-

"9. Another attempt was also made by the learned Advocate General, when he made submission that trees and land is not to be separately assessed. According to him, appellants are either entitled to the price of the land as an orchard land or of the trees. In my considered view, this plea is not more open in view of the standing order No.28 issued by the Financial Commissioner, Himachal Pradesh, as well as a decision of Division Bench of this Court in Collector, LADC Mandi vs. Karam Singh and others, and other connected cases (latest HLJ 2000 (HP) 694). In this case after relying on Standing Order No.28 issued by the Financial Commissioner, Himachal Pradesh and also taking note of Harbans Singh's formulae, it was held that land as well as trees standing thereon are to be assessed separately."

Standing Order No. 28 issued by the Financial Commissioner undisputedly having force of law deals with the procedure required to be

adopted in the State of H.P. for the purposes of acquisition of land by the Government. Para 35 provides for Form of notice which is required to be issued under Section 9 of the Act and Paras 43, 43A requires that main points which are required to be examined by the authorities approving the award, which inter alia, contain separate assessment of compensation on account of structures, wells, tubewells, trees etc. Para 45 prescribes the format in which the statement showing the compensation awarded is required to be filled in. From column 8 it is clear that separate information with regard to number of trees, houses etc. on the land are required to be furnished. In the State of Himachal Pradesh these instructions being fully applied the appellants cannot contend that the impugned award is faulty on the ratio of the decisions in the preceding paras are applicable. In these cases no such provision was there which itself required the assessment to be carried out separately. In the present case, there is no capitalization of prices at all.

In *Abdul Kuddus Mandal and others* vs. *State of Assam and another,* reported in (1999) 6 SCC 589, the Apex Court has held:-

> "It appears to us that the High Court fell in a basic error in not awarding compensation for the houses on the ground that since land had been acquired, it is only compensation for removal of houses standing thereon, which could have been granted because houses had not been acquired. That is not a correct approach. The compensation was required to be paid for the houses which were standing on that land. The land could not have been acquired without the houses standing thereon. The Reference Court had rightly awarded compensation for the houses. The order of the High Court on this account suffers from apparent error. Insofar as the reduction in the rate for land from Rs.36,000 as awarded by the Reference Court to Rs.20,000 per bigha by the High Court is concerned. We are not persuaded to disagree because we

> have not found any error to have been committed by the High Court in that behalf. The High Court has not adverted to the compensation on account of zirut separately, though compensation on that account had been awarded by the Land Acquisition Collector and upheld by the Reference Court. "

Now in the instant case, applying the aforesaid principles and perusal of the award passed by the Collector itself would show that assessment has been separately carried out with regard to land and super structure. In my view, if the State itself had offered separate amount of compensation for the structure separately, therefore, the award cannot be faulted for this reason. Accordingly, the Court below was right in enhancing the amount of compensation.

In view of the aforesaid facts and circumstances, the contention raised by the learned counsel for the appellants has to be rejected.

Perusal of the award, however, shows that the interest on the additional compensation has been awarded w.e.f. 5.3.1988 till 4.7.1991. Since the Notification was published on 18.6.1988, the award needs to be modified to this extent. The award is accordingly modified to the extent that the respondent shall be entitled to interest as awarded w.e.f. 18.6.1988 instead of 5.3.1988.

For the foregoing reasons, the appeal is partly allowed. The award is modified to the aforesaid extent.

10th September, 2007 (Sanjay Karol), J.

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